

AMENDED IN SENATE JULY 18, 2007

AMENDED IN SENATE JULY 3, 2007

AMENDED IN ASSEMBLY APRIL 16, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 403

Introduced by Assembly Member Tran

February 15, 2007

An act to amend Section 12252 of the Probate Code, relating to attorney-client privilege.

LEGISLATIVE COUNSEL'S DIGEST

AB 403, as amended, Tran. Attorney-client privilege.

(1) Under existing law, a client of a lawyer has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the client and lawyer if the privilege is claimed by the holder of the privilege, a person who is authorized to claim the privilege by the holder, or the person who was the lawyer at the time of the confidential communication. However, the lawyer may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

This bill would require the California Law Revision Commission to study whether and, if so, under what circumstances, the attorney-client privilege should survive the death of the client, and to report all of its findings to the Legislature on or before ~~January~~ July 1, 2009.

(2) Under existing law, if subsequent administration of an estate is necessary after the personal representative has been discharged because other property is discovered or because it becomes necessary or proper for any cause, the court is required to appoint as personal representative the person entitled to appointment and to give notice of the hearing of the appointment to the person who served as personal representative at the time of the order of discharge and to other interested persons, as specified.

This bill would require the appointed personal representative to be a holder of the decedent's lawyer-client privilege, as specified. The bill also would require the court to perform these functions when subsequent administration of an estate is necessary after the personal representative has been discharged because disclosure is sought of a communication that is deemed privileged in the absence of a waiver by a personal representative, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12252 of the Probate Code is amended
2 to read:

3 12252. If subsequent administration of an estate is necessary
4 after the personal representative has been discharged because other
5 property is discovered, disclosure is sought of a communication
6 that is deemed privileged in the absence of a waiver by a personal
7 representative under Article 3 (commencing with Section 950) of
8 Chapter 4 of Division 8 of the Evidence Code, or because it
9 becomes necessary or proper for any other cause, both of the
10 following shall apply:

11 (a) The court shall appoint as personal representative the person
12 entitled to appointment in the same order as is directed in relation
13 to an original appointment, except that the person who served as
14 personal representative at the time of the order of discharge has
15 priority. The appointed personal representative shall be a holder
16 of the decedent's lawyer-client privilege for purposes of Article 3
17 (commencing with Section 950) of Chapter 4 of Division 8 of the
18 Evidence Code.

19 (b) Notice of hearing of the appointment shall be given as
20 provided in Section 1220 to the person who served as personal

1 representative at the time of the order of discharge and to other
2 interested persons. If property has been distributed to the State of
3 California, a copy of any petition for subsequent appointment of
4 a personal representative and the notice of hearing shall be given
5 as provided in Section 1220 to the Controller.

6 SEC. 2. The California Law Revision Commission shall study
7 the issue of whether and, if so, under what circumstances, the
8 attorney-client privilege should survive the death of the client. The
9 commission shall report all of its findings to the Legislature on or
10 before ~~January~~ *July* 1, 2009.